IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2056 OF 1984

1. Colgate-Palmolive Company,
a public company incorporated
under het Laws of the State of
Delaware, Unietd Staes of America
and having its principal office
at 300, Park Avenue, New York
10022, U.S.A.

2. Colgate Palmolive (India) Limietd,
a limited company incorporated under
the Indian Companies Act VII of 1913
and having its registered office at
Appejay House, 3, Dinshaw Vachha Road,
Bombay 400 020. ... Plaintiffs

Versus

M/s. Hindustan Rimmer, a firm carrying
of business C/2/7, Ashok Vihar
Community Centre, Phase I
Delhi 110 052. ... Defendants
and Anr. ... Plaintiffs

Mr. Amit Jamsandekar i/by Crawford Baylay & Co.
for Plaintiff.

None for Defendants.

CORAM : F.I. REBELLO,J.
DATED : AUGUST 26, 2005

ORAL JUDGMENT

1. Plaintiff has filed the present suit for infringement of their mark and artistic work and also for action in passing of and copyright violation against defendants. The defendants have failed to file their written statement. There was injunction operating during the pendency of the suit.

2. From the pleadings of the parties, the following issues arise :

(1) Whether the Plaintiffs prove that defendants by

using a deceptively similar can have infringed their regular Trade mark No. 290361?

(2) Whether the Plaintiffs prove that defendants by use of the can bearing a colour scheme, design and get up identical with or deceptively similar to the can in which the Plaintiff's products are sold are seeking to pass of their goods as the goods of the Plaintiff?

(3) Whether the Plaintiffs prove that defendants by using the can are guilty of breach of the copyright subsisting in the Colgate Tooth Powder can?

(4) What order? What relief?

3. Plaintiffs have examined Dinesh Castalino, the Deputy Company Secretary. He has tendered an affidavit by way of examination in chief. It is deposed that the first Plaintiff applied for and obtained registration as a trade mark of a label bearing a distinctive get up in which their product "Colgate Tooth Powder" (Label) was and is being sold under Registration No. 290361. Colgate tooth powder label bearing No. 290361 is registered in respect of goods specified in Class 3 which is marked as Exh. B is Form TM 46. The certificate

is renewed from time to time. Exh. C is the last renewed certificate. It is also deposed that the Plaintiff are the leading and world renowned manufacturers of dental products under the trade mark "Colgate". The said trade mark "Colgate" as well as the trade mark consisting of the said label having a distinctive get up and colour scheme have attained world-wide reputation. The said trade mark "Colgate" and the red and white label and cans in which the product was sold, have attained wide popularity and have come to be associated exclusively by the members of the public and trade with the Plaintiffs. The first Plaintiff is the proprietor of the registered trademark "Colgate" and the said label. The first Plaintiff permitted and authorised the second Plaintiff inter alia to manufacture, sell, offer for sale and/or distribute in India tooth powder in accordance with the standards and specifications prescribed by it and under the strict control and supervision of the first plaintiff and to use for the sale of such tooth powder, the first Plaintiff's said label mark consisting of the unique and distinctive lettering, layout, device, colour scheme and get up of the said label and also to use the distinctive get up on the carton. To regulate the arrangement, the Plaintiffs entered into a registered User Agreement

dated 4th June, 1974 and an Application was made on 6th June, 1974 to the Registrar of trade marks for recording the Second Plaintiff as registered user. The applications for variation/renewal of the registration of the second Plaintiff as the Registered User have been made from time to time. The registered user Agreement dated 17th May, 1999 was entered into between the first and the second Plaintiffs in respect of various trade marks including trade mark No. 290361 which are marked as Exh. D-1 and D-2 and have been relied upon. It is also set out that Colgate carton and can of the Plaintiffs represent an original artistic works the first Plaintiff is entitled to a copyright subsisting in the same. The said label has a red background with the work "COLGATE" depicted on all four sides thereof in bold white letters in a distinctive pattern. The can is marked as Exh. J, has a distinctive colour scheme which has red colour background and other part of the can has white background. The plastic lid of the can is also of red colour. The mark "COLGATE" is printed in the upper part of the can in white colour. The letter "C" is in capital letter and the other letters are small. Below the word "Colgate" and in the white portion of the can the words ’Tooth Powder" are printed in dark red colour one below

the other and below the said words, the words "protects your teeth and gums" are printed in red colour.The witness also deposed that the Plaintiffs have been using the distinctive packaging for Colgate tooth powder which has following essential features :

(a) Predominant red and white colour scheme or combination;
(b) White lettering on red background and;
(c) a unique, distinctive and stylized representation of the mark Colgate alongwith other features.

. The can containing the tooth powder bears the mark "COLGATE" and is sold in the said cans and the cans has a distinctive lettering, layout, colour scheme and get up and has attained vast and extensive reputation in India. Large sales have been made of the said product.

. Plaintiffs came to know some time in the year 1984 that the Defendant was using for sale of its tooth powder, under the mark "COSMO TOOTH POWDER" cans and cartons bearing the lettering, layout, colour scheme and get up, design and other features, which were identical with and/or

deceptively similar to that of "COLGATE TOOTH POWDER: which has been registered under No. 290361. The defendants by using the impugned cans, labels and cartons, has infringed and continues to infringe the Plaintiff's registered trade mark No. 290361 and is passing off and/or enabling others to pass off its goods as and or the goods of the Plaintiff.

4. This evidence of the Plaintiff remain uncontroverted. From the evidence, it is clear that the cans which are being used by the Defendants are similar in colour and get up and have the same distinctive features as that of the Plaintiff's cans. The Plaintiffs are therefore, entitled for judgment.

5. Considering the above, suit decreed in terms of Prayer Clause (a), (b), (c) as also (e). Cost to be paid by the defendant. It will be open to the Plaintiffs to file colour photographs of the two cans which are marked as Exh. K and L. On producing such photographs, Prothonotary and Senior Master is directed to return the said cans.

(F.I. REBELLO,J.)